

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 19, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2702**

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**Introduced by Assembly Members Tran and Plescia**

February 24, 2006

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An act to amend Section 803 of the Penal Code, relating to statutes of limitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2702, as amended, Tran. Statute of limitations: child pornography.

Existing law sets forth various statutes of limitations for various crimes. Existing law provides that the applicable period of limitations does not begin to run on a violation of prohibitions against engaging in certain transactions involving monetary instruments connected to criminal activity until the offense has been, or reasonably could have been, discovered.

This bill would include in the types of offenses for which the period of limitations does not run until the offense has been discovered the production of child pornography or the secret filming of a person.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

1 (d) If the defendant is out of the state when or after the offense  
2 is committed, the prosecution may be commenced as provided in  
3 Section 804 within the limitations of time prescribed by this  
4 chapter. ~~Any time, and no time~~ up to a maximum of three years;  
5 during which the defendant is not within the state shall ~~not~~ be a  
6 part of those limitations.

7 (e) A limitation of time prescribed in this chapter does not  
8 commence to run until the offense has been discovered, or could  
9 have reasonably been discovered, with regard to offenses under  
10 Division 7 (commencing with Section 13000) of the Water Code,  
11 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
12 6.7 (commencing with Section 25280) of, or Chapter 6.8  
13 (commencing with Section 25300) of, Division 20 of, or Part 4  
14 (commencing with Section 41500) of Division 26 of, the Health  
15 and Safety Code, or under Section 386, or offenses under  
16 Chapter 5 (commencing with Section 2000) of Division 2 of,  
17 Chapter 9 (commencing with Section 4000) of Division 2 of,  
18 Section 6126 of, Chapter 10 (commencing with Section 7301) of  
19 Division 3 of, or Chapter 19.5 (commencing with Section 22440)  
20 of Division 8 of, the Business and Professions Code.

21 (f) For offenses involving the production of child  
22 pornography, the limitation of time prescribed in this chapter  
23 does not commence to run until the discovery of the offense.

24 (g) For an offense described in paragraph (2) of subdivision  
25 (k) of Section 647, the limitation of time prescribed in this  
26 chapter does not commence to run until the offense has been  
27 discovered, or reasonably could have been discovered.

28 (h) (1) Notwithstanding any other limitation of time described  
29 in this chapter, a criminal complaint may be filed within one year  
30 of the date of a report to a California law enforcement agency by  
31 a person of any age alleging that he or she, while under the age of  
32 18 years, was the victim of a crime described in Section 261,  
33 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by  
34 Chapter 293 of the Statutes of 1991 relating to penetration by an  
35 unknown object.

36 (2) This subdivision applies only if all of the following occur:

37 (A) The limitation period specified in Section 800, 801, or  
38 801.1, whichever is later, has expired.

1 (B) The crime involved substantial sexual conduct, as  
2 described in subdivision (b) of Section 1203.066, excluding  
3 masturbation that is not mutual.

4 (C) There is independent evidence that corroborates the  
5 victim's allegation. If the victim was 21 years of age or older at  
6 the time of the report, the independent evidence shall clearly and  
7 convincingly corroborate the victim's allegation.

8 (3) No evidence may be used to corroborate the victim's  
9 allegation that otherwise would be inadmissible during trial.  
10 Independent evidence does not include the opinions of mental  
11 health professionals.

12 (4) (A) In a criminal investigation involving any of the crimes  
13 listed in paragraph (1) committed against a child, when the  
14 applicable limitations period has not expired, that period shall be  
15 tolled from the time a party initiates litigation challenging a  
16 grand jury subpoena until the end of the litigation, including any  
17 associated writ or appellate proceeding, or until the final  
18 disclosure of evidence to the investigating or prosecuting agency,  
19 if that disclosure is ordered pursuant to the subpoena after the  
20 litigation.

21 (B) Nothing in this subdivision affects the definition or  
22 applicability of any evidentiary privilege.

23 (C) This subdivision shall not apply where a court finds that  
24 the grand jury subpoena was issued or caused to be issued in bad  
25 faith.

26 (i) (1) Notwithstanding any other limitation of time described  
27 in this chapter, a criminal complaint may be filed within one year  
28 of the date on which the identity of the suspect is conclusively  
29 established by DNA testing, if both of the following conditions  
30 are met:

31 (A) The crime is one that is described in subparagraph (A) of  
32 paragraph (2) of subdivision (a) of Section 290.

33 (B) The offense was committed prior to January 1, 2001, and  
34 biological evidence collected in connection with the offense is  
35 analyzed for DNA type no later than January 1, 2004, or the  
36 offense was committed on or after January 1, 2001, and  
37 biological evidence collected in connection with the offense is  
38 analyzed for DNA type no later than two years from the date of  
39 the offense.

1 (2) For purposes of this section, “DNA” means  
2 deoxyribonucleic acid.

3 (j) For any crime, the proof of which depends substantially  
4 upon evidence that was seized under a warrant, but which is  
5 unavailable to the prosecuting authority under the procedures  
6 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
7 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
8 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
9 claims of evidentiary privilege or attorney work product, the  
10 limitation of time prescribed in this chapter shall be tolled from  
11 the time of the seizure until final disclosure of the evidence to the  
12 prosecuting authority. Nothing in this section otherwise affects  
13 the definition or applicability of any evidentiary privilege or  
14 attorney work product.

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